J. T. Slocomb Co. *and* Daniel Pothier *and* District Lodge 91, International Association of Machinists and Aerospace Workers, AFL–CIO. Cases 34–CA–5825, 34–CA–5829, and 34–RC–1117

July 7, 1994

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND DEVANEY

The issues in this case include whether the Respondent laid off 11 employees in retaliation for a union organizing campaign, in violation of Section 8(a)(3), and whether it threatened employees with discharge, in violation of Section 8(a)(1).[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions to the extent consistent with this Decision and Order.

We agree with the judge that the Respondent laid off 11 employees in violation of Section 8(a)(3) of the Act. We further find that the Respondent violated Section 8(a)(1) of the Act in two respects detailed below.

1. The judge found that in September 1992, after the layoff of Milton Moore, employee Bill Colburn told Supervisor Stavos Milios that he (Colburn) thought that he would be the one laid off. In response, Milios told Colburn that he (Milios) had spoken to management and that Colburn would not be laid off as long as he stopped talking about the Union. The judge found that the above statement did not constitute a threat of discharge in violation of Section 8(a)(1) of the Act, since the statement was ''not meant as a threat, but rather as a warning from a friend to be careful.'' We disagree.

In reaching his conclusion, the judge stated that Milios' statement could not be viewed in isolation and had to be analyzed by taking into consideration the good relationship existing between Milios and the employees. The judge noted that only a month before, Colburn had asked Milios what he thought about the Union, to which Milios responded that it would be great if the Union got in. On the other hand, when employee Moore, on two occasions, had tried to talk to Milios about the Union, Milios showed great reluctance in pursuing the subject.

There is no evidence that Milios actively supported the Union. In fact, apart from Milios' isolated comment to Colburn that it would be great if the Union got in, Milios expressed no opinion on the subject and had shown great reluctance to talk to employee Moore about the Union. We cannot find, as did the judge, that the statement to Colburn constituted only a warning from one friend to another. Rather, Milios, as a member of management, was conveying a message from his management superiors to Colburn. That message was that Colburn would be laid off if he did not stop talking about the Union. We find that Milios' statement to Colburn would reasonably cause fear on Colburn's part and that it constituted a threat which violates Section 8(a)(1) of the Act. See, e.g., *Olney IGA Foodliner*, 286 NLRB 741, 748 (1987) (employee Zuber), enfd. 870 F.2d 1279 (7th Cir. 1989).

2. On September 8, 1992, the Respondent's president, John Gregory, at a meeting held to inform the unit employees he was rescinding the wage cut announced on August 10, also told the employees that he would ''get rid of the bastards who were bringing the company down.'' The judge, in analyzing the layoffs of the Respondent's 11 employees, found that Gregory was referring to union adherents, and he relied on Gregory's statement as evidence of the Respondent's antiunion animus. The judge, however, did not pass on whether the statement constituted an independent 8(a)(1) violation. The General Counsel seeks such a finding.

Although Gregory's statement was not alleged in the consolidated complaint as an independent 8(a)(1) violation, the Board is entitled to make findings on fully litigated unfair labor practice allegations. *Mine Workers District 29*, 308 NLRB 1155, 1159 (1992). The issue was fully litigated. There was testimony from both employees Jeffrey Clabette and Gregory as to what Gregory said at the meeting and the judge credited Clabette's testimony set out above. We find Gregory's statement constituted an unlawful threat of discharge of those employees who supported the Union. The threat was in violation of Section 8(a)(1).

ORDER[3]

The National Labor Relations Board adopts the recommended Order of the administrative law judge as

[1] On May 4, 1993, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed limited cross-exceptions and a brief.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] We have found that the Respondent violated Sec. 8(a)(1) by threatening employees with layoff and discharge. Accordingly, the judge's conclusions of law are modified to insert the following as par. 4, renumbering the following paragraphs. ''The Respondent by statements of its supervisor Stavos Milios and its president John Gregory, threatened the employees with layoff and discharge in vio-

Continued

modified below and orders that the Respondent, J. T. Slocomb Co., South Glastonberry, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(b) and renumber the following paragraphs.

''(b) Threatening employees with layoffs and discharge because of their support for the Union.''

2. Substitute the attached notice for that of the administrative law judge.

IT IS FURTHER ORDERED that the election held in Case 34–RC–1117 be set aside, and the case remanded to the Regional Director for Region 34 to conduct a new election whenever the Regional Director deems it appropriate.

[Direction of Second Election omitted from publication.]

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT lay off, terminate, or otherwise discriminate against our employees in retaliation for their support for District Lodge 91, International Association of Machinists and Aerospace Workers, AFL–CIO or any other labor organization.

WE WILL NOT threaten you with layoffs and discharge because of your support for the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole Robert Lalumiere, Brian Lewczyk, David Seidl, Daniel Pothier, Gary Nimirowski, Henry Olejarz, Milton Moore, Thomas Preuss, William Colburn, Willard Still, and Jeffrey Clabette, with interest, for any loss of earnings they suffered as a result of our discrimination against them, and WE WILL offer them full and immediate reinstatement to their former jobs or, if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges.

WE WILL remove from our files any reference to the layoffs of these employees, and will will notify them in writing that this has been done and that evidence of this unlawful action will not be used as a basis for future action against them.

J. T. SLOCOMB CO.

lation of Section 8(a)(1) of the Act.'' We shall also conform the notice with the renumbered Order.

Craig Cohen, Esq., for the General Counsel.
David Ryan, Esq. and *Joseph Summa, Esq. (Summa and Ryan, P.C.)*, for the Respondent.
William Rudis, Grand Lodge Representative, for District Lodge 91.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me from February 8 through 11, 1993, in Hartford, Connecticut. The consolidated complaint herein, which issued on October 30, 1992,[1] was based on unfair labor practice charges filed on September 9 by Daniel Pothier, and charges and first and second amended charges filed by District Lodge 91, International Association of Machinists and Aerospace Workers, AFL–CIO (the Union), on September 9 and 21 and October 5. The complaint alleges that J. T. Slocomb (Respondent) violated Section 8(a)(1) of the Act by threatening its employees with unspecified reprisals and layoffs if they engaged in union and other protected concerted activities. The complaint further alleges that from about September 3 through 10 Respondent converted a 10-percent wage reduction to a layoff and laid off 12 named employees because they joined, supported, or assisted the Union, in violation of Section 8(a)(1) and (3) of the Act. In addition, by order consolidating cases issued on January 29, 1993, together with a Report on Objections, the Regional Director ordered that I hear the one remaining objection to the election conducted on November 12, the allegedly unlawful layoff of Jeffrey Clabette, also one of the alleged discriminatees in the unfair labor practice case.

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Rhode Island corporation with its principal office and place of business in South Glastonbury, Connecticut (the plant), as well as other facilities, is engaged in the manufacture and nonretail sale of airplane parts. During the 12-month period ending September 30, Respondent purchased and received at the plant goods valued in excess of $50,000 directly from points outside the State of Connecticut. Respondent admits, and I find, that it is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION STATUS

In its answer, counsel for Respondent states that it is without sufficient knowledge to form a belief as to the allegation that the Union is a labor organization within the meaning of Section 2(5) of the Act. There was no direct testimony, stipulations, or evidence on the subject. Based on other testimony

[1] Unless indicated otherwise, all dates referred to herein relate to the year 1992.

herein, I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE FACTS

As stated above, Respondent is engaged in the nonretail manufacture and sale of airplane parts. Pratt & Whitney Aircraft Division of United Technologies Corporation (Pratt & Whitney) accounts for about 50 percent of its business. The remaining 50 percent is divided almost equally between the General Electric Company (G.E.), and the United States Government. Admittedly, Respondent's financial condition was becoming unfavorable during 1992. Sometime early in 1992 there were some layoffs of, at least, indirect employees (those not ''on the floor'') and Respondent's executives were given a pay reduction. In about April, the employees were informed that the second-shift premium of 25 percent was being reduced to 15 percent. More importantly, on August 10, Respondent had a meeting of employees at which time the employees were informed that the wages of all employees was being reduced by 10 percent. The testimony establishes that this was the catalyst that began the union movement at the plant.

Thomas Preuss, who was employed in Respondent's bullard room, testified that at the conclusion of this August 10 meeting, he and the fellow employees whom he spoke to were ''furious.'' He immediately spoke to fellow employees Daniel Pothier and Bill Colburn about getting a union to protect them from future cuts. On the following day, prior to reporting for work, Preuss went to a sister local of the Union. When he arrived at the union office he was told that the person to speak to was on vacation and would return on Wednesday. When he returned to the shop, he informed Pothier and Colburn of what had occurred. On August 14 Preuss met with Union Representative Henry Jackson who arranged for a meeting of interested employees on August 16. Jeffrey Clabette, who was employed by Respondent as a lathe operator, testified that at the August 10 meeting, Respondent's president, John Gregory, told the employees that the 10-percent pay cut was necessary to avoid layoffs. He did not hear about the employees campaign on behalf of the Union until August 27, when a fellow employee informed him that employees were going to the union hall to sign cards for the Union. He went to the hall and signed an authorization card for the Union on August 31.

Clabette also testified that beginning in about January, about once a week, he wore to work a T-shirt that said: ''You can't go wrong when your union is strong,'' and it had the union name on it. Nobody from management ever commented on this shirt until September 3, when Benny Kosis, his leadman, told him that he had been at a foreman's meeting where layoffs of lathe operators was discussed. He said that they spoke about Clabette because of the shirt, but he didn't want him to be laid off. He also said that Respondent knew about the Union and they were not pleased about it and were trying to get rid of the people who were joining the Union.

Colburn, who was a lathe operator for Respondent, testified that he spoke with Preuss and Pothier after the August 10 meeting and they decided that they needed a union. Preuss said that he would look into it and a few days later Preuss told him that he had arranged a meeting with the Union for August 16. Pothier also testified that at the conclusion of the August 10 meeting they spoke about union representation, and a few days later Preuss told him that a union meeting was scheduled for August 16. Milton Moore, a lathe operator for Respondent, testified that after August 10, there was ''a lot of talk'' about union; employees discussed it on their break and at mealtimes. He spoke to a number of employees about it. In addition, he spoke to Stavos Milios, a supervisor and admitted agent of Respondent, about it twice in about August. Moore initiated these conversations. He tried to explain to Milios that unions tried to offset excesses of management when they exist and that there were good unions and bad unions. When Milios ''showed great reluctance'' to talk about this subject, Moore ended the conversations. Moore also spoke about the Union to Joe DiMauro, a bargaining unit employee whose father, Angelo DiMauro, is Respondent's director of manufacturing. Moore told him that unions could offset arbitrary decisions by management and create fairness in the bargaining unit. Moore signed an authorization card for the Union at the union hall on about August 30.

Brian Lewczyk was employed by Respondent in its toolroom. He was on vacation on August 10, and when he returned to the plant on about August 25, a number of employees told him about the union movement at the plant. A lot of employees were talking about the Union and Lewczyk became ''very vociferous'' in his support for the Union. He spoke to a number of employees, including Joseph DiMauro on the subject. In addition, he spoke to John Marotta, who was acting supervisor in the absence of his supervisor, Vincent Sledjeski, an admitted foreman and agent of Respondent. He spoke to Marotta about the pros and cons of the Union, but Marotta was ''very tight lipped'' about the subject and later told him that he was very upset with what was occurring. Lewczyk signed an authorization card for the Union on about August 29. Henry Olejarz, who was employed by Respondent as a machine operator, was absent from work on August 10 due to the death of his mother. He returned to work at the end of August and there was a lot of talk about the Union at that time. He spoke to more than half the employees in his department about it. On September 2 he went to the union hall with a fellow employee and they signed authorization cards on that day. Willard Still, who was employed by Respondent as a machinist, testified that shortly after August 10, Colburn asked him if he would sign a card for the Union and he said that he would be glad to, and he signed a card on about August 28. In addition, he spoke to from 6 to 12 employees about the Union and brought 1 employee to the union hall to sign a card. Robert Lalumiere, who was employed by Respondent as a toolmaker, testified that fellow-toolroom employee Pothier approached him on August 24 and told him that employees were organizing a union drive at the plant. Lalumiere said that he would have to think about it. On the following day, he told Pothier that he was beginning to favor the Union and on August 27 he went to the union hall and signed an authorization card for the Union. He also spoke to a number of employees, including Joe DiMauro and told them that he felt that the Union would help them protect their rights and benefits.

David Seidl, a machine repairman employed by Respondent, testified that he was first approached about the Union by a fellow employee late in August. At that time he responded

that he did not want to get involved at that time. On September 1, he and a fellow employee went to the union hall where they signed authorization cards. Gary Nimirowski, who was employed by Respondent as a machinist, testified that right after the August 10 meeting, Preuss approached him and asked him if he was interested in getting involved with the Union. He also told him to keep it quiet. Nimirowski spoke to about four other employees about the Union and went to the union hall on about August 22 with two other employees and signed an authorization card.

The Union conducted a meeting of interested employees on August 16; approximately six employees (including Preuss, Colburn, and Pothier) attended, all of whom signed authorizations cards for the Union at that time. The Union instructed them to speak to fellow employees whom they felt they could trust about the Union. Preuss had been a union member when he was employed at Pratt & Whitney and he performed a lot of the leg work for the Union in its campaign with Respondent. Between August 27 and 29, he helped ''funnel people over'' to the Union to sign authorization cards; he was present until he had to leave to report for work. Other employees asked Preuss for authorization cards, but the Union felt that it might jeopardize his job if he was caught distributing union authorization cards at the plant. Therefore the Union arranged for its president, Steve Merrick, to be at the plant's parking lot during the mealbreak period on September 1. The arrangement was for Merrick to park his car in a corner of the lot and for Preuss to spend his break watching for his supervisor, Pat Hennessey (second-shift general foreman and an admitted supervisor for Respondent) to be sure that he did not see Merrick's activities. If there was a problem, Preuss was to signal Pothier who was in the street with Merrick. Preuss testified that the following day, at about 5 p.m. DiMauro and Hennessey were paged in the plant, apparently, not an unusual event. About 10 minutes later Hennessey (with whom he had a good working relationship) came into his department and said to Preuss that he understood that there was a union official in the plant's parking lot the prior evening. Preuss asked: ''What would somebody from the Union be doing here?'' Hennessey said: ''Trying to organize or trying to get a union in.'' Preuss said that with all the money the employees lost they couldn't afford a union. Hennessey walked out of the department without speaking to anybody else. The following evening Hennessey again came into Preuss' department and told him that somebody from the Union was in the area the prior night and they knew his name. Preuss said that he didn't know anything about it. Later that evening, a few minutes prior to the mealbreak, Preuss was walking toward the bathroom and Hennessey asked him: ''What's your hurry? You have a union meeting to go to?'' Preuss answered: ''Yes, you want to go?'' and Hennessey said that he did not. Hennessey did not testify. Colburn testified that on September 2 Hennessey approached him at work and asked if he had seen anybody in the parking lot on the previous night; he said that he didn't see anybody that he didn't know. Hennessey said that ''he had gotten word that there was a union representative out there the night before.''

Like Preuss, Colburn testified that he and the others present at the August 16 union meeting signed cards for the Union. After this meeting, he spoke to employees on both shifts at the plant about the Union. One of those that he spoke to was Moore, who was a long-time employee who knew a lot of people at the plant. Moore said that he would talk to other employees. On August 27, he, Preuss, and Pothier were present at the union hall when a number of people came down and signed union cards. On about August 29, Colburn asked Milios if he had heard anything about the Union. He said that he heard rumors about it. When Colburn asked how he felt about it, Milios said that it would be great if the Union got in.

Respondent's witnesses who testified on this subject were Gregory, Arlene King, Gregory's daughter and assistant vice president and director of human resources for Respondent, and Angelo DiMauro. King testified that she first learned of the union activity at the plant on September 11, when Joe Summa, counsel for Respondent, came to the facility to discuss the unfair labor practice charges that were filed on September 9 and received by Respondent on September 11. DiMauro testified that he first learned about the Union on the evening of September 8. When he returned home on that day his wife gave him some union brochures that she found in the house. Later that day, his son Joe told him that some men dropped the union brochures off at the house. Gregory testified that he first learned of the Union's organizing campaign at the plant when he ''got a letter.'' He does not remember when he got the letter or whether it was from the Union or the Labor Board. Since there is no record evidence of any letter from the Union to the Respondent, presumably he is referring to the unfair labor practice charges received on September 11.

As stated above, the 10-percent wage cut of August 10 was the precipitating factor in the employees' decision to seek union representation. Gregory testified that he instituted the 10-percent pay cut for all employees in August because Respondent did not have enough cash to pay all of its employees, ''and I considered at that time that the best solution to save people's jobs was to give everybody a ten percent cut and that's what I did.'' In addition to announcing the cut at a meeting of employees, Respondent issued the following memorandum, dated August 10, to all employees:

> Due to economic conditions and after careful review, management finds it necessary to reduce all wages across the Board by 10%. This reduction will be reflected in the paycheck you will receive August 27, 1992.

The alleged discriminatees were each laid off by Respondent from September 3 through 10. At about the time of these layoffs Respondent, by Gregory, rescinded the 10-percent reduction. Gregory, who was away for part of the month of August, testified that when he returned, he heard ''rumblings that the people on the floor . . . were disgruntled by the effect of the ten percent cut.'' He could not sleep that night, apparently, Friday, September 4,

> and I came in the next morning and I said to them, hey, you know, I made a mistake,I should not have cut you ten percent. What I should have done was lay people off, that was the proper thing to do and that's what I'm going to do.

For those employees not at work that day, Saturday, September 5, he had a meeting of employees on Tuesday, Septem-

ber 8 (Monday, September 7, was Labor Day, a holiday) and he told the employees the same thing he had said on Saturday. He testified that he told the employees at these meetings that the reduction was unfair to the employees who were working hard, and ''that we had some sons of bitches out there who are cutting air and those were the people I was going to ask Angelo to lay off.'' At neither of these meetings did he mention the Union; he had no knowledge of the Union at the time. DiMauro testified that at the September 8 meeting Gregory told the employees that he was reinstating their 10 percent, but that the poor financial condition of the company might require some layoffs. He said that the employees would have to be more productive and make fewer errors. He also said that he had received a letter from the Union saying that they wanted to represent the workers. Clabette testified that at the September 8 meeting, Gregory said that he made a mistake in cutting 10 percent from the pay of the honest workers, but that ''he would get rid of the bastards who were bringing the company down.'' Gregory testified that he never said that. Clabette testified further that Gregory never mentioned the Union at this meeting.

The complaint alleges that the 12 named employees were unlawfully laid off. In the alternative, the complaint alleges that the Respondent converted a 10-percent wage reduction to an unlawful layoff of these employees. The alleged discriminatees are Preuss, Clabette (the subject of the remaining objection), Colburn, Pothier, Moore, Lewczyk, Olejarz, Still, Lalumiere, Seidl, Nimirowski, and Robert Stickel. All but Stickel testified. The complaint alleges that he was unlawfully laid off on September 4. The only evidence adduced regarding Stickel was DiMauro's testimony that he had an absentee problem. In addition, at times he would arrive for work in the afternoon when he was suppose to begin work in the morning or would leave work early, claiming a doctor's appointment. On September 3, Stickel was working on a ''hot job'' that was supposed to be shipped the following day. When DiMauro was in his department about 1 o'clock that day he saw that Stickel was not there and his machine was not running. The leadman did not know where he was and DiMauro later learned that he had left without notifying anybody. The job that he was working on was delayed 2 days due to his absence and DiMauro ordered that he be terminated that day, although the paperwork is dated the following day. Due to the lack of any evidence to rebut Respondent's defense that Stickel was terminated for a valid business reason, I recommend that this allegation be dismissed.

The complaint alleges two violations of Section 8(a)(1) of the Act; that in about late August, Milios threatened its employees with unspecified reprisals if they engaged in union activities, and threatened employees with layoff if they engaged in union activities. Milios is an admitted supervisor and agent of Respondent; he did not testify at the hearing. Colburn testified that on September 4, after Moore was laid off, he saw Milios, who was his supervisor prior to June when he transferred to the second shift, and he told Milios that he thought that he was the one who would be laid off. Milios took him to the side and said that he had spoken to ''management'' and they said that he would not get laid off as long as he stopped talking union.

Each of the alleged discriminatees will be discussed next. At the conclusion of those facts, and Respondent's specific defense for each, Respondent's general economic defense will be discussed.

Preuss was employed as a machinist on the second shift working from 4:30 p.m. to 3 a.m. with a half hour mealbreak, 5 days a week. He began working for Respondent in February. Prior to that he was employed at Pratt & Whitney (some of whose employees are represented by the Union), which he listed on his employment application with Respondent. From February through August he worked 5 hours overtime on all but about six Saturdays. On occasion, he also worked 5 hours on Sunday. On Thursday, September 3, he was asked by Paul Barrs, an admitted supervisor and agent of Respondent, to work on Saturday, and he said that he would and he did work on Saturday, September 5. Because Monday, September 7 was a holiday, his next scheduled workday was Tuesday, September 8. When he entered the building, Hennessey, his supervisor, told him that he was being laid off. He asked why and Hennessey said that he didn't know, but that he could find out the next day when he picked up his check and pink slip. Hennessey also said that if he had his way he would not have let him go. The next day he picked up his pink slip and it said: ''Lack of work.'' There is no evidence that he received any warnings about his work during his employment with Respondent. DiMauro testified that Preuss was selected for layoff because he was the least qualified in the department in that ''he needed a lot of help on set-ups and so forth'' and ''he was the last hired in that department. So I couldn't support it, I let him go.''

Clabette began working for Respondent in November 1991 as a lathe operator on the first shift. His regular work hours were 7 a.m. to 4:30 p.m. with a half hour for lunch, and 5 hours on Saturday, almost every week. As stated above, he testified to the statements that Kosis made to him on September 3 about his union T-shirt. On September 10, his supervisor, Vincent Ciccia, told him that he was being discharged. He said that he was sorry to see him go, but it was not his decision. His pink slip said slow work performance. The pink slip for all the other alleged discriminatees says lack of work. Clabette had received two or three oral warnings and four written warnings prior to this layoff, but had never been suspended. The warnings are dated April 1, May 20, and September 1 and 9. Each of these warnings is for slow work and the lack of production. The warning dated September 9 states: ''Third written warning for lack production [sic]. This is a final warning and he will be terminated.'' Actually, this was Clabette's fourth written warning. DiMauro testified that he terminated Clabette because his productivity was very low and he had received written warnings.

Colburn began working for Respondent in 1984. He was employed as a lathe operator and set up man on the second shift; he averaged about 50 hours a week. As stated above, he was involved with Preuss and Pothier in getting Merrick to come to the plant on September 1 to sign up employees and was questioned by Hennessey the following day about it. He was asked to, and did, work on Saturday, September 5. He was asked, but refused, to work on Sunday and Monday, September 6 and 7. When he reported for work on Tuesday, September 8, he saw Preuss next to the toolcrib with his toolbox: ''You only do that when you're getting laid off or fired.'' Hennessey was standing next to Preuss and Colburn asked Hennessey: ''Do you want me to get my tool

box too?'' (''Because I knew that if Tom Preuss was getting laid off, I knew I was next.'') Hennessey answered yes, and told him to get his toolbox, which he did and left the plant. The next day he picked up his pink slip; it said that he was laid off for lack of work. Colburn received six written warnings, principally for deviation of parts, dated February 10, 1988, August 23, 1988, January 8, 1990, March 1, 1991, July 31, 1991, and March 30; the March 1, 1991 warning resulted in a 3-day suspension. DiMauro testified that Colburn was chosen for layoff because of the large number of written warnings that he received together with the fact that he was one of the highest paid employees in his department.

Pothier began working for Respondent in December 1990. He performed tool and dye work on the second shift. Prior to April, he was earning $17.50 an hour. Over the final 6 months of his employment with Respondent he averaged 60 hours work a week. His regular supervisor was Vincent Sledjeski. On September 3 when he reported for work he was told that Lewczyk and Lalumiere were laid off. Shortly thereafter, leadman John Marotta, who was replacing Sledjeski who was absent that day, asked him if he would work overtime that entire weekend. Pothier asked how the company could ask employees to work overtime right after laying off two employees. Marotta said that it didn't make any difference since overtime was not mandatory. Pothier reported for work on September 4 and met Al Carrelli, foreman and an admitted supervisor and Sledjeski's superior. Pothier asked him if he wanted him to punch in, ''because I knew I was getting fired.'' Carrelli said: ''No, I can't let you punch in, I have to lay you off for lack of work. You know more of what's going on then I do.'' Carrelli then told him that earlier that morning he was instructed to make a list of employees to be laid off. He sent up a list without Pothier's name. When the list came back to him, Pothier's name was on it, but he was told that he could make revisions. He deleted Pothier's name and sent it back up. When it was returned to him, Pothier's name was again on the list. His pink slip stated that he was laid off for lack of work. He was never disciplined or given a warning about his work. DiMauro testified that Pothier was a good toolmaker, but he had to downsize the department and Pothier was chosen because of his high rate of pay and Respondent's production needs:

> [I]f I have to make a light fixture, I require a toolmaker with less skill. If I have to make a dye . . . I require a skilled toolmaker. If I have to make a produce dye, I require . . . an excellent one. When I review all the work that had to come down from engineering to the tool room . . . those requirements, those develop how difficult a job, they weren't there any longer . . . I had to make cuts and I picked the highest people because of the situation that I was in.

He testified that prior to Pothier's layoff, Respondent had 10 to 12 toolmakers; at the time of the hearing, they had 2.

Moore began working for Respondent in 1979; he was employed in the lathe section on the first shift. Milios was his supervisor. He worked 9 hours a day, 5 days a week, with some weekend or holiday work. On Thursday, September 3, Milios asked him and another employee if they would work Saturday, September 5; Moore said that he would. On the following morning, Moore was again asked if he would work on Saturday, and again said that he would. Later that day, September 4, Moore was told that Joe Geraci, assistant director of manufacturing for Respondent, and an admitted agent, wanted to see him in his office. When he got there, Geraci told him that they had to lay him off for lack of work. Moore asked: ''Are you sure that it's for lack of work? ''Geraci said: ''No, that's it. We have to lay you off for lack of work.'' Moore told Milios that he better find somebody for the overtime work the following day, and Geraci and Milios both said that it had been taken care of. On cross-examination, Moore was shown a number of written warnings. He identified a warning for excessive tardiness dated August 26, 1981, as well as a memo dated January 1982 stated that he was being laid off for the lack of work. He did not remember a warning to ''M. Moore'' dated dated January 24, 1984, for excessive absenteeism and tardiness. He signed, and remembered, a warning dated March 21, 1984, for excessive absenteeism and tardiness. He also remembered a warning dated March 21, 1986, for scrapping a part. He did not remember a warning dated May 16, 1986, which states that it is his last written warning for excessive deviations, lack of attentiveness, and absenteeism. It concludes that if it happened again his employment will be terminated. He remembered a warning dated April 8, 1988, one dated May 8, 1991, for a deviation on a part and one dated May 20, 1991, for excessive scrap, which resulted in a 3-day suspension. He also remembered a warning dated June 14, 1991, for errors that he made. DiMauro testified that he had to lay off some employees and he chose Moore because of the large number of written warnings that he received.

Lewczyk began working for Respondent in 1984. He was employed in the toolroom on the first shift; Sledjeski was his supervisor. His regular work hours were from 7:30 a.m. to 4:30 p.m. with occasional work on Saturdays. He averaged 45 to 50 hours a week. In addition to the union activities described above, Lewczyk spoke to about 14 fellow employees about the Union. On Thursday, September 3, John Marotta, who was the acting supervisor in Sledjeski's absence, asked him to come with him to Geraci's office. Geraci told him that they were laying him off for the lack of work. Lewczyk asked when it was effective and Geraci said: ''Immediately. Get your tools and get out now.'' He left. Lewczyk had a problem arriving at work on time and on February 24 he was given a written warning and placed on probation for the month of March. The warning states:

> During the past two weeks you came to work late five days each week. You are being placed on probation for the month of March. Your supervisor has warned you about tardiness in the past but you have chosen to ignore him. If this tardiness continues through March, your employment at J.T. Slocomb will be terminated.

He received no other warnings either before or after this warning. DiMauro testified that Lewczyk

> had a problem getting along with people down on the floor. Often when I got on the floor, he was fighting with his co-worker, he wasn't getting along with his foreman and he had a lot of written warnings in his

file, which I sign them, and he was the highest paid employee. So I had to make the decision to let him go.

Olejarz began working for Respondent in 1977; he was employed as a milling machine operator on the first shift; Carelli was his supervisor. He generally worked from about 4:30 a.m. to about 3:30 p.m., averaging about 50 hours a week during his final 6 months of employment with Respondent. He testified that on September 4, at about 1:30 p.m., Carelli told him to shut down his machine. Olejarz asked him: ''It's me, Al, isn't it?'' and Carelli said: ''Yes, you're going to get laid off for lack of work.'' He told Olejarz that he had nothing to do with the decision; he was given his name by ''upstairs.'' Due to the death of his mother, Olejarz was absent from work for about the first 3 weeks of August. DiMauro testified that when Olejarz began his employ with Respondent he had an excellent work record and attitude and received promotions because of it. However, ''in the last couple of months he had . . . some sort of problem that his attitude wasn't good towards the company and towards me.'' He testified further that Olejarz took 3 weeks off from work after his mother died and never notified him when he would return. Olejarz testified that a week after he returned to work after this 3-week absence he received a letter from Respondent saying that he was needed at the plant. DiMauro testified that after Olejarz returned to work he was no longer friendly to him; he approached Olejarz on a few occasions and said good morning and Olejarz turned around and walked away. ''So I made the decision to let him go because . . . he was one of the highest paid in the department and I made the decision to let him go, perhaps he would be happy somewhere else.'' Olejarz received an appraisal dated April 1991, which gave him an excellent rating in five of six categories and a good rating (the second best) in the remaining category. It says that he is given the most difficult jobs because he can be depended on to produce good work in a reasonable time.

Still began working for Respondent in 1986 and was employed as a machinist on the second shift; Hennessey was his supervisor. He worked a 10-hour day 5 days a week; he only worked twice on a Saturday or Sunday. When he reported for work on Tuesday, September 8, Carelli, his foreman, met him at the timeclock and told him not to punch in, that he was being laid off and his pink slip would say the lack of work. He also told Still that they believed that Still was responsible for posters placed throughout the plant encouraging employees to engage in a work slowdown to protest the wage cuts. He testified that he was not responsible for these notices. Still received two written warnings dated March 28, 1989, and January 24, 1992, for deviation of parts. In addition, by memo dated August 28, 1989, Carelli wrote that Still refused to perform a job as directed. In May 1989 Still received an appraisal that rated him ''good'' for each of the six work categories. It said that he was a ''top operator'' whose work quality was ''slightly better than average.'' It stated further that he was ''one of the more qualified'' operators who was usually assigned the more challenging jobs. DiMauro testified that he chose Still for layoff because he had to downsize the department and Still was one of the highest paid employees in the department. In addition, he had a written warning and suspension for excessive deviations.[2]

Lalumiere began his employ with Respondent in October 1990. He was a toolmaker on the first shift; Sledjeski was his immediate supervisor. His regular work hours were 6 a.m. to 3:30 p.m. and 6 a.m. to noon on Saturday. He averaged about 50 hours a week. He testified that on Wednesday, September 2, group leader and acting supervisor at the time, John Marotta, approached employees in the toolroom, including Lalumiere, and said there was overtime work for the weekend and asked them if they would be willing to work. Lalumiere said that he always worked on Saturdays, so he would not refuse to work. On September 3, at about 1:40, Lewczyk came into the toolroom and said that he was taking his tools because he had been laid off. Marotta then came by and told Lalumiere to come with him to Geraci's office. Lalumiere asked him if he was being laid off and Marotta said that he couldn't tell him, that he should come with him to Geraci's office. When they got there Geraci told him that he was being laid off for the lack of work. On his way back to get his tools, Carelli told him that he had learned of the layoff only 10 minutes earlier and that he had no input in his being chosen for layoff. Lalumiere had received no warnings from Respondent. DiMauro testified that Lalumiere was a good toolmaker, but one of the highest paid employees in the toolroom. He realized that he had to downsize when he looked at the work Respondent had scheduled for the future and did not have enough of the work that Lalumiere performed to afford his salary: ''I let him go because I couldn't support it.''

Seidl began working for Respondent in November 1989 as an electronic technician, machine repair on the first shift. He repaired the electronics in the plant, as well as Respondent's facilities in Waterbury, Connecticut, and Rhode Island. In the beginning of 1992 he was working 55 hours a week. Over the year this amount was slowly reduced so that by the summer he was working 40 hours a week. His boss was Bob Marotta, brother of John Marotta. In the early afternoon of September 3, Marotta told him that he was being laid off for the lack of work. Seidl asked him why, when the prior week when he asked Marotta if push came to shove in the department who would be laid off, Marotta told him that another employee, Bob Bell, would be chosen. Marotta did not answer. He had never received any warnings about his work. He testified that in addition to the electronic equipment of Respondent, he also repaired Respondent's automobiles. During the last 2 months of his employment with Respondent, he performed a lot of car repairs. He also testified that there was still about a month or two of electronic repair work to be performed when he was laid off. He testified that his maintenance department and Respondent's building maintenance department perform separate functions; his department works on electronics and machines while the building maintenance department works on the buildings and grounds. He knows of a number of employees in the building maintenance department who left Respondent's employ in 1992, either voluntarily or involuntarily. DiMauro testified that he chose Seidl for layoff because he had to downsize and Seidl

[2] There is no record evidence of Still having been suspended by Respondent.

was one of the highest paid employees in the machine repair department.

Nimirowski began working for Respondent in 1988 as a machinist on the first shift; Paul Barrs and Joe Geraci were his supervisors. He regularly worked between 45 and 60 hours a week; during the last 6 months of his employment he worked an average of 50 hours a week. During the week prior to the Labor Day weekend, Barrs asked him to work overtime during the weekend, even though he had previously told him that he could not do so. He testified that on September 3, Geraci stood in the department for long periods of time watching him, leaving, returning, and watching him again. Previously, the employees sometimes went weeks without seeing Geraci in the department. On the following morning, Gregory came in the department and stood by his machine watching him for about 5 minutes. This was unusual; if Gregory was in the area he usually walked through the department without stopping to observe any employee's work. At about 2:30, Barrs told him to come with him to Geraci's office. Nimirowski, who had heard talk about other layoffs, asked Barrs if he was going to be laid off for lack of work and Barrs said that he was. When they got to Geraci's office, he asked Geraci if he was being laid off for the lack of work and he said that he was. Nimirowski said that he could not believe that he was being laid off for lack of work when there were ''piles and piles'' of work in the department and they were asking all the employees to perform overtime work. Geraci did not answer. He testified further that two employees from other departments, Bob Bell and Amy Dumas, were loaned to his department and worked there daily and on weekends during this period. In addition, during this period he saw ads that Respondent placed in two local newspapers for employees performing the same work that he did. The last such ad that he saw was in the September 2 newspaper. Nimirowski received written warnings for lateness on July 11 and August 30, 1990. On September 24, 1990, he was suspended for 5 days for excessive deviations of the parts he made. He received another written warning on September 26, 1991, and one on January 24 for carelessness, and ''was warned that future carelessness could jeopardize employment at J. T. Slocomb.'' There were no further warnings. In his final appraisal in February 1991, he received a good rating for five of the six job categories and a satisfactory rating for attendance. The best category was one higher than good, excellent. The appraisal states:

> Gary has been continuing to improve both his work and attendance. He is cooperative and his work continues to be of a consistently good quality.

DiMauro testified that he chose Nimirowski for layoff because he had a written warning and a suspension in his record.

As stated above, Respondent defends that these employees, and others, were laid off because of the Company's deteriorating financial condition. King, DiMauro, Gregory, and Joseph Snyder, Respondent's materials manager, testified in support of this defense. King testified that in mid-1992 Respondent had four facilities. The Waterbury, Connecticut facility was an overhaul and repair facility which was closed in about January 1993. The facility in Florida laid off most of its employees in February 1993 and ''is presently under way for closure.'' Rhode Island is a cold roll steel facility and, at the time of the hearing herein, was under evaluation for closing, which ''meant it had about two to three weeks left.'' Respondent had 440 employees at all of these facilities on December 31, 1991; this number had been reduced to 277 as of December 31. She testified that Respondent began laying employees off in larger than usual numbers in early 1992; the reason was that Respondent had a cash flow problem. However, for a large majority of those laid off, Respondent gave ''lack of work'' as the reason:

> The reason that lack of work is checked off, because if you check off other and put down lack of cash, then the guys and the women that are laid off cannot collect unemployment until a hearing is established. And therefore their unemployment checks are delayed. So, if you check off lack of work, there's no question down at the State and they can get their checks on a regular timely basis.

Respondent introduced into evidence, through King, a listing of those who left Respondent's employ (either voluntarily or involuntarily) during 1992. One employee, an inspector was fired in January; 12 employees were hired, including three for the Rhode Island facility and one for the Florida facility. In February, two were fired and one quit. At the same time, Respondent hired 14 employees, including 4 for Florida and 1 for Rhode Island. In March, 13 left Respondent's employ, 4 from the plant, 4 from Florida, 2 from Rhode Island, and 3 from the Waterbury plant. Three of the four from the plant who left were fired; the other one quit. One employee was hired to work in the plant. In April, 24 employees left Respondent's employ; all but one was from the plant. Of these 23, 19 are designated as laid off for lack of work. Of these 19 employees, 3 were production employees: 1 was an assembler, and 2 were overhaul and repair employees. In April, Respondent hired four employees for its Florida facility. In May, 17 employees left Respondent's employ, 12 from the the plant. Of these, seven were laid off for lack of work; one of these employees was a machinist. In addition, three maintenance employees and an expeditor were laid off. Two employees were hired in May, one for Florida and one for Waterbury. In June, 12 employees left; 7 were from the plant. Of this number, two assemblers and one overhaul and repair employee were laid off for lack of work. Four employees were hired for the Florida facility. In July, 12 employees left; 9 were from the plant. Laid off were a products control employee, a sales employee, and a maintenance employee. The others quit or retired. Five employees were hired, including an assembler at the plant, who was laid off in April and two employees for the Florida facility. In August, 16 employees left, all but 3 were from the plant. Five of these employees were laid off, and two of these five were production employees. Three employees were hired, one for the plant and two for Florida. In September, 24 employees left, all but 4 were from the plant. In addition to the alleged discriminatees herein, a gage employee, two inspectors, a lathe employee, a machinist, an engineering employee, an accounting employee and a quality control employee were laid off. Three employees were hired: two for Rhode Island and one for Florida. In October, five employees left; four were from the plant. The two that were laid off were from

maintenance and purchasing. Six employees were hired; one, a product control employee, was hired for the plant. In November, five employees left; three were from Florida. The two from the plant quit. Three employees were hired; one, a quality control employee, for the plant. In December, 73 employees left; of these, 47 were from the plant. All but six of these were laid off for the lack of work. King testified about the reason for this large number of layoffs in December:

> The company had been in trouble all year long anyway. We didn't want to layoff anybody. Earlier in the year we had laid off as many indirect people as was possible and maintained services to the rest of the production people in the company.
>
> Traditionally, you always layoff indirect before you touch production because that's where the money comes from. After the September layoffs and some earlier layoffs in the Summer, the company hoped that it could survive maintaining the production people that it had left and we tried very hard—got back together after the big layoff . . . [in] . . . September.
>
> And then in December we were farther in the hole than we could imagine and we had to layoff the rest of these people.

Snyder testified about the business that Respondent lost during the period in question. He testified that in about June Respondent realized that its backlog of orders ''a few years down the road'' was shrinking: ''but we didn't just sit there and . . . wait for things to happen, we aggressively pursued work.'' In 1990 and 1991 Respondent shipped between $3 and $4 million a month worth of products; in January 1992 this amount was between $2.6 and $2.8 million. Between March and September, this monthly amount was about $2.2 million. In December 1991 Respondent had a work backlog of $34.5 million; in June this backlog was $26 million. In early 1992, Respondent attempted to obtain a contract with the Allison Gas Turbine Division of General Motors (Allison). Allison was involved in the hub and spoke concept of air transportation. This envisioned large airliners (the parts of which was a major part of Respondent's business through G.E. and Pratt & Whitney) flying into large or medium sized cities called hubs, and then smaller planes connect from these cities to smaller cities (the spokes). This would create the need for smaller engines to power these smaller planes, resulting, hopefully, in more work for Respondent through Pratt & Whitney and G.E. Respondent put together a package of $600 million over 20 years: ''We figured that would be . . . sufficient to keep us going.'' In January, Allison informed Respondent they they were the low bidder; however, it turned out that Allison had a different bidding method than Respondent was accustomed to. In March, Allison got all the bidders together to bid against each other until the bids got so low that Respondent withdrew from the bidding. On March 27, Respondent officially withdrew as a bidder for Allison.

As stated above, approximately 20 percent of Respondent's work comes from G.E. and it receives monthly statements from G.E. listing all parts ordered, the price and delivery dates. The statements also notify Respondent of the cancellation of orders. Received in evidence was a monthly statement G.E. sent Respondent on May 23. This statement lists the total amount of General Electric's commitments to Respondent through mid-1994 (the term of the statement) as $4,637,000. Snyder testified that what he especially noted in this statement were the large number of parts that were canceled. This statement canceled orders valued at $1,325,000 through mid-1994, almost 25 percent of the total order. Snyder testified that about 2 weeks later Respondent was notified of other G.E. cancellations, but there have been none since that time. As to the effect of the cancellation on Respondent, Snyder testified:

> Any cancellation in work indicates that the company should start taking a look at downsizing. We're losing money out of our backlog, we don't have the work anymore and we should start taking a look at getting down to a point where we can accommodate the work that we have.

Snyder testified that Respondent obtained a contract from the United States Army to produce a nozzle for a helicopter engine; the total value of the contract was $1.5 million. Respondent began work on the part in the spring. By letter dated August 20, the Army confirmed that the contract would be terminated in its entirety and asked Respondent to provide them with proof of its alleged termination charges of $141,000 that Respondent had requested from the Army in a letter the prior month. He also testified that in 1989 Respondent had obtained a sizeable contract from the Navy ASO in Philadelphia to produce spare engine parts. In the late summer, early fall of 1992, Respondent received tentative approval for another contract for spare parts for this Navy ASO, but the amount was not definite because the Navy's fiscal year was ending and they were not sure how much they would have available to spend on the contract. In anticipation of receiving this contract Respondent began purchasing the raw materials needed in the middle of September so that they would be prepared to produce the parts and ship them by the requested delivery date of March 1993. Subsequently, Respondent received a contract, but for only $7.5 million rather than the $23 million they had hoped for.

Snyder also testified about problems that Respondent encountered with a $3.3 million contract for stator assemblies for the F-100 engines at the Kelly Air Force Base (Kelly). Respondent received a $1 million advance from Kelly for this job. They had previously performed work for Kelly without problem, and anticipated none on this occasion. The contract was awarded in October 1990, and it required, among other things, inspections. A month later Respondent submitted its first test results, but they were not well received. Respondent began manufacturing in the summer of 1991 confident that because of its past experience with Kelly there would be no problems; they were wrong. This job slowed down in August and was still running in September (although not on overtime) even though they had not received formal approval of the work. Sometime after mid-September, Respondent stopped work on this contract. At the time of the hearing, the contract had still not been approved, nor had it been canceled: ''the contract is really in limbo right now but we're not allowed to work on it.'' Snyder testified further that the commercial aircraft industry is an important part of Respondent's business and of the 9000 com-

mercial aircraft in the United States today, 1000 of them are sitting on the ground idle.

DiMauro testified that layoffs had to be made in 1992 because there were not enough dollars coming in to support the payroll and purchase raw materials. In late August he was directed to layoff 30 employees during September and October because the work backlog was dropping. As to which employees would be laid off: ''that's my decision.'' After he chose the employees (as described above) he informed their supervisor on the same day. He never consulted with the supervisors on which employees should be chosen.

Gregory testified that Respondent laid off employees in mid-1992 because: ''We were short of cash, we were losing money.'' The employees laid off during this period were, principally, indirect labor, i.e., nonproduction employees. Production employees were protected during this period because ''They're the people who make the money. Everybody services the man on the machine . . . in the manufacturing organization the man on the machine, as far as I'm concerned, is the most important person in the plant. . . . He's the guy who makes the money for you, nobody else does.'' When he returned from Florida in late August, his accountant told him that they didn't have enough money to pay the employees and the bills: ''Losing money is one thing, but cash flow, that's another thing.'' At that time he was advised to layoff production employees, but he refused. Instead, he told his people to cut costs and save money wherever they could. Gregory testified that he never instructed DiMauro to layoff employees until September 5 and 8, when he told the employees that he was going to return the 10-percent pay cut: ''The time I told Angelo to lay people off was when I gave the ten percent back. He refused to lay people off prior to that.'' As to who instructed DiMauro to layoff the employees, he testified: ''I haven't the faintest idea.'' He wasn't aware that production employees had been laid off prior to September 5.

During the hearing, General Counsel moved to amend the complaint to allege that three leadmen, acting foremen, were supervisors within the meaning of the Act. They are John Marotta, Benny Kosis, and Roderick Ares, none of whom testified herein. This motion was granted. Respondent denies the supervisory status of these individuals alleging that they are nonsupervisory leadmen who occasionally act as foremen in the absence of the foremen, but on those occasions do not possess supervisory powers. In his brief, General Counsel makes clear that the purpose of his amendment is to establish knowledge of the discriminatees' union activities, rather than any 8(a)(1) violation. Additionally in his brief, General Counsel only argues for the supervisory status of Marotta and Kosis; therefore Ares will not be discussed further.

Kosis was the leadman over the lathe operators on the first shift. The supervisor in the department was Vincent Ciccia. In Ciccia's absence Kosis was the acting supervisor. On September 1, Clabette was given a written warning for working too slowly. Kosis' signature is on the line for the supervisor's signature. King testified that leadmen are hourly paid employees and, unlike supervisors, do not have the power to hire or fire employees. If they have a problem with an employee: ''they can just tell the next supervisor up . . . they can just say what happened and start an investigation.'' When a leadman is acting as a supervisor, he can sign a written warning as long as it is also signed by the employee involved. Kosis, a long-time employee for Respondent, was acting supervisor for Ciccia on September 1 and signed the warning because Clabette also signed it. King testified that leadmen ''are like a conduit to the management as . . . far as what's going on with their group of guys.'' Kosis was listed on the *Excelsior* list for the election, apparently, without objection from the Union. DiMauro testified that when the supervisors are out, the leadmen fill in to make sure that the work gets out. The leadmen have no power to hire, fire, or recommend the hiring of an employee. If the leadman is in charge of a department in the absence of the supervisor, he can recommend that an employee be disciplined or fired. He would make that recommendation to DiMauro or Geraci, his assistant, and they would investigate the situation and make a decision. He or Geraci have to review and sign all written warnings. As to the written warning that Kosis gave to Clabette, he testified: ''I don't know how it got in the file.''

John Marotta is the first-shift group leader in the toolroom; he was acting supervisor when Sledjeski was absent. Sledjeski was on vacation the week that Pothier was laid off and Marotta was the acting supervisor for the week. He asked Pothier and Lalumiere if they wanted to work overtime that weekend. In addition, during these periods, he distributed work to the employees and told them what to do. Lewczyk testified that Marotta was acting foreman from 12 to 24 days a year. Lalumiere testified that Sledjeski was absent about 2 weeks from January to September. The line of command above Marotta was Carelli, Geraci, and DiMauro and they were at the plant during Sledjeski's absence. In Sledjeski's absence, Marotta assigned jobs and handled problems that occurred; when there was a problem, he discussed it with Carelli. Marotta was also listed on the *Excelsior* list.

IV. ANALYSIS

The sole 8(a)(1) allegations are that Respondent, by Milios, in about late August at its facility, threatened its employees with layoff and unspecified reprisals if they engaged in Union or other protected concerted activities. The only evidence to support this allegation (as it was not briefed) is Colburn's uncontradicted testimony that, after Moore was laid off, he told Milios, who had been his supervisor prior to June when he transferred to the second shift, that he thought that he would have been the one laid off. Milios took him to the side and said that he had spoken to ''management,'' and they said that he would not be laid off as long as he stopped talking about the Union. This statement cannot be looked at in isolation. Rather it must be examined to see the relationship between Milios and the bargaining unit employees. On about August 29, when Colburn asked Milios how he felt about the Union, Milios said that it would be great if the Union got in. In addition, on two occasions Moore spoke to Milios about unions, but he ended the conversations when Milios showed reluctance about talking about the subject. I find that Milios' statement to Colburn does not violate Section 8(a)(1) of the Act. In determining the coercive effect (if any) of a statement made by a supervisor and/or agent of an employer, all the surrounding circumstances must be examined. The employees, obviously, had a good relationship with Milios. Moore initiated conversations with him regarding the Union and backed off only when it became obvious that Milios didn't want to talk about

it. When Colburn asked him how he felt about the Union, Milios said that it would be great if the Union got in. In the instant situation, when Colburn told Milios he thought that he would be the one who was laid off, Milios took him to the side and said that management had said that he would not get laid off as long as he didn't talk about the Union. The circumstances establish that this was not meant as a threat, but rather as a warning from a friend to be careful. As the Board stated in *Paintsville Hospital Co*., 278 NLRB 724, 725 (1986):

> In not one of the instances above were [the supervisors] acting on behalf of management, much less at management's direction. Rather, both were acting in their own interest and in accordance with their own sympathies which were plainly contrary to those of management. Their unquestioned goal was to assist and protect the employees from management, not to coerce them. Thus, in warning employees not to wear buttons and cautioning them not to reveal their sympathies to management, it is clear that Webb was only trying to protect the employees from retaliation.

I therefore recommend that the 8(a)(1) allegations be dismissed.

Counsel for General Counsel has alternate theories regarding the 8(a)(3) allegations. Initially, General Counsel alleges that Respondent instituted all the layoffs in order to thwart the employees' union activity and therefore each of these layoffs violates the Act without relation to the individual employee's union activity and Respondent knowledge of it. Secondarily, General Counsel alleges that each of the layoffs violates Section 8(a)(3) of the Act under the Board's traditional approach under *Wright Line*, 251 NLRB 1083 (1980). As the Board stated in *Guille Steel Products Co*., 303 NLRB 537 fn. 1 (1991): ''the focus of this alternative Sec. 8(a)(3) theory is upon an employer's motive in discharging its employees rather than upon the antiunion or prounion status of particular employees.'' In *ACTIV Industries*, 277 NLRB 356 fn. 3 (1985), the Board stated:

> Accordingly, the General Counsel was not required to show a correlation between each employee's union activity and his or her discharge. . . . Instead, the General Counsel's burden was to establish that the mass discharge was ordered to discourage union activity or in retaliation for the protected activity of some.

In *Birch Run Welding & Fabricating v. NLRB*, 761 F.2d 1175, 1180 (6th Cir. 1985), the court stated:

> The focus of the theory is upon the employer's motive in ordering extensive lay-offs rather than upon the anti-union or pro-union status of particular employees. The rationale underlying this theory is that general retaliation by an employer against the workforce can discourage the exercise of section 7 rights just as effectively as adverse action taken against only known union supporters.

Finally, the Board, in *Pyro Mining Co*., 230 NLRB 782 fn. 2 (1977), in affirming the judge's finding of 8(a)(3) violations, stated: ''The layoff itself, not the selection of employees, was unlawful.''

Due to the absence of any 8(a)(1) statements or interrogation to establish union animus, General Counsel's case herein rests principally upon the uncharacteristically large number of sudden layoffs just as the Union movement at the plant was getting into full swing. Respondent defends, and General Counsel does not dispute, that it was suffering financial difficulties at this time. He argues, however, that Respondent's choice of individuals to layoff, as well as the timimg and the large number of such layoffs, establishes that it was unlawfully motivated.

In making this determination there are credibility findings that must be made. I found the discriminatees to be generally credible witnesses, some more than others, especially since there was almost no testimony to contradict their testimony. Lewczyk, while fairly credible, was extremely hostile during cross-examination. This may have been the result of the fact that, as a long-term employee (since 1984) he was angry at being laid off. Of Respondent's witnesses, I found King and Snyder to be articulate and credible witnesses who appeared to be testifying in a truthful manner. On the other hand, I found DiMauro to be less credible and Gregory to be incredible: his testimony was simply not believable. For example, he testified that on September 4 he became aware that his production employees were very unhappy about the 10-percent pay cut and could not sleep that night because of it. Gregory is, obviously, a skilled and intelligent businessman, having started from almost nothing in 1946 to a company with 440 employees at 4 locations. I find it incredible that for the prior 4 weeks he didn't hear the ''rumblings'' of ''the people on the floor'' that they were unhappy about the wage reduction. Why, all of a sudden did his realization come 4 weeks after this announcement was made? Did he think that the employees would be happy with it? Based on the evidence herein, I find that his change of heart was caused by the fact that, earlier that week, Respondent had learned that its employees had contacted the Union and were signing authorization cards for the Union.

The uncontradicted credible evidence is that on about September 2 and 3, Hennessey told Pruss that Respondent knew that a union official was at the plant's parking lot the prior evening. On the evening of September 3, when Preuss was going to the bathroom, Hennessey sarcastically asked him if he was going to a union meeting. On September 2, Hennessey also told Colburn that Respondent knew that a union representative was at the plant the prior evening. The only other direct evidence of Respondent's knowledge of the union activities at the plant was Kosis' statement to Clabette that Respondent knew about the Union and they weren't pleased about it and were trying to get rid of those who joined, and Lewczyk's discussions with Marotta of the pros and cons of the Union.[3] It is General Counsel's burden to establish that Kosis and Marotta are supervisors within the meaning of the Act. *Soil Engineering & Exploration Co*., 269 NLRB 55 (1984). In *Stewart & Stevenson Services*, 164 NLRB 741, 742 (1967), the Board stated: ''It has long been held that the sporadic assumption of supervisory duties, e.g.,

[3] In establishing knowledge of the employees' union activities, I discount the employees' testimony about their discussions with Joe DiMauro. Without more (and there is none here), the mere fact that his father is a supervisor and agent of Respondent does not establish knowledge by Respondent.

during annual vacation periods of a regular supervisor, is not sufficient to establish supervisory status at other times.'' Of equal importance to the amount of time spent substituting for the regular supervisor is the requirement that during these periods the individual performs (or has the authority to perform) supervisory functions. In *Latas de Aluminio Reynolds*, 276 NLRB 1313 (1985), the Board stated:

> We agree that the appropriate test for determining the status of employees who substitute for supervisors is whether they spend a regular and substantial portion of their working time performing supervisory tasks.

See also *Aladdin Hotel*, 270 NLRB 838 (1984). Kosis, Marotta, and the other leadmen are hourly paid employees who were included on the *Excelsior* list and, apparently, voted at the election. The sole evidence adduced to establish their supervisory status was that they substituted for the regular supervisor (in Marotta's case, Sledjeski, who was absent from 2 to 4 weeks a year) and that Kosis signed the written warning given to Clabette on September 1. Other than that, there is no evidence that they performed supervisory functions in the absence of their supervisor. In fact, in Marotta's situation, the evidence establishes that, even in Sledjeski's absence, Supervisors Carelli, Geraci, and DiMauro were present. I therefore find that Kosis and John Marotta were not supervisors within the meaning of the Act, and therefore the statement that Lewczyk made to Marotta and the statement that Kosis made to Clabette cannot be used as additional proof of Respondent's knowledge of the Union.

Although no independent 8(a)(1) violations have been found herein, there are two places where Respondent's union animus was displayed. In Hennessey's statements to Preuss and Colburn one can infer that Respondent was not happy with the Union's organizing drive. In addition, in Gregory's speech to the employees on September 8 rescinding the 10-percent pay cut (in the credited testimony of Clabette) he said that he would ''get rid of the bastards who were bringing the company down.'' There is no evidence that 1 month earlier (prior to the appearance of the Union), when he announced the pay cut, that he used such language with a similar threat. Although he never used the word ''union,'' that was the only change from his announcement a month earlier and it is reasonable to assume that he was referring to the employees who were supporting the Union.

Respondent defends, and the evidence establishes, that it was suffering financial difficulties. It requires no case citation for the proposition that an employer does not violate the Act by terminating an employee for a valid business reason or any reason other than his/her union or other protected concerted activities. Respondent claims that these September layoffs were warranted by its business losses; a careful examination of the facts belies this argument.

Snyder credibly testified about orders that Respondent lost. Respondent had high hopes of being the low bidder on the Allison contract, which it hoped would generate $600 million in orders, but withdrew in March. Snyder identified a monthly statement from G.E. that canceled a substantial amount of its orders with Respondent. However, that statement is dated May 23. Snyder testified that G.E. canceled some other orders 2 weeks later, but none since that time. In the Summer Respondent lost a $1.5 million contract with the Army and asked for termination charges of $141,000. Snyder also testified about the Kelly contract which was worth about $3.3 million, with a $1 million advance. Problems were first encountered in early 1991. Manufacturing began in the summer of 1991 and slowed down in August because of the recurring inspection problems, although it didn't cease until mid-September. On the other hand, Snyder also testified that in the late summer or early fall Respondent received tentative approval for a contract with the Navy for spare parts, although the amount of the contract was not certain. Respondent began purchasing raw materials in mid-September in anticipation of this contract for a requested delivery date of March 1993. Subsequently, Respondent received the contract, but in an amount substantially less than the $23 million they were hoping for.

This testimony supports Respondent's position that it had lost some business in 1992. However, the Allison and G.E. losses occurred 3 and 5 months before the layoffs and the Kelly contract was encountering difficulties a year before the layoffs and production continued on it past the time of the layoffs. It is true that Respondent was notified in August that the Army was terminating the $1.5 million contract for nozzles, but this loss and the Kelly loss were more than made up by the $7.5 million contract it received from the Navy in the late summer, early fall, about the time of the layoffs. In summary, although it is clear that Respondent had lost some business in 1991 and 1992, I find no supportable correlation between this loss of business and the September layoffs.

Respondent also defends that there was nothing unusual about the September layoff, that it had laid off employees throughout 1992 because of declining business. Respondent's records establish that the first layoffs at the plant occurred in April. At that time 16 employees were laid off; 3, an assembler and 2 overhaul and repair, were included. In May, one production employee and three maintenance employees were among those who were laid off. Of seven plant employees laid off in June, two were assemblers and one was an overhaul and repair employee. In July, none of the nine plant employees laid off were production employees. In August, two of the five plant employees laid off were production employees. In September, in addition to the 12 alleged discriminatees herein, Respondent laid off 6 employees, none of whom were production employees. The next layoff of production employees did not occur until December; only two plant employees were laid off between September and November, at the same time that two employees were hired to work in the plant.

An additional troubling aspect of Respondent's case is the speed,timing, and number of the layoffs. Without, again, going into detail, almost all the laid-off employees had been working overtime up to the date of their layoffs. Preuss worked an overtime day on Saturday, September 5; on his next workday, Tuesday, September 8, he was laid off. Colburn was asked to, and did, work overtime on September 5. He refused a request to work September 6 and 7. He was also laid off on September 8. On September 3, Pothier was asked to work overtime the entire weekend. On Friday, September 4, he was laid off. On September 3 and 4, Moore was asked to work overtime on September 5; he agreed. He was laid off later in the day on September 4. On September 2, Lalumiere was asked to work overtime on September 5 and he agreed to do so. On September 3 he was laid off. On

about September 1, Nimirowski was asked to work overtime during the holiday weekend, but said that he couldn't do so. He was laid off on September 4. In addition to the apparent contradiction of claiming difficult financial conditions and working these employees about 50 hours a week, and asking most to work overtime and, almost at the same time laying them off, I have difficulty with the suddenness and the timing of these layoffs. Although there is no record evidence of the regular workweek at the plant, the fact that the employees were laid off at different times between September 3 and 10 establishes that some were laid off during their regular workweek. Respondent never established why there was such a rush that they could not wait until the end of the regular workweek to effectuate the layoffs. Further, although there is, apparently, no legal requirement of advance notice of layoffs, five of the laid-off employees had been employed by Respondent for between 6 and 15 years. Respondent never satisfactorily explained why the suddenness of the layoffs when only Clabette was laid off because of allegedly poor work performance.

Finally, I found unconvincing DiMauro's testimony regarding his reasons in choosing the particular employees for layoff. He testified that about half of the alleged discriminatees were chosen because they were the highest or one of the highest paid employees; some were also allegedly chosen because of warnings they had received. On the other hand, he testified that Preuss was chosen because he needed help on setups and he was the last hired in his department. Presumably, if he was the last employee hired in his department he had the lowest or one of the lowest hourly rates. This appears to conflict with his reason for choosing the others. Also confusing was his reason for choosing Olejarz, who began working for Respondent in 1977. He testified that ''in the last couple of months he had . . . some sort of problem that his attitude wasn't good toward the company and towards me.'' On a few occasions, he approached Olejarz and said good morning and Olejarz turned around and walked away. It was possible that he alleged change of attitude was due to the recent death of his mother. Regardless, it is certainly suspicious that a 15-year employee of Respondent who had never had a warning about his work and had near the best possible appraisals would be chosen for layoff because of a conceived change in his attitude at the time of his mother's death. I also found confusing Gregory's testimony that production employees were not laid off until after he returned the 10-percent cut to the employees on September 5 and 8. The evidence establishes that 8 of the 12 alleged discriminatees were laid off prior to September 5.

For all these reasons I find that the layoffs of Lalumiere, Lewczyk, Seidl, Pothier, Nimirowski, Olejarz, Moore, Preuss, Colburn, Still, and Clabette was effectuated for the single purposes of chilling the Union's organizational drive among its employees and that these terminations therefore violated Section 8(a)(1) and (3) of the Act. Accordingly, I sustain the remaining objection regarding the layoff of Clabette and recommend that the election conducted on November 12 be set aside and a new election be conducted at a time and place determined by the Regional Director for Region 34.

CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) and (3) of the Act by laying off the following employees between September 3 and 10, 1992: Robert Lalumiere, Brian Lewczyk, David Seidl, Daniel Pothier, Gary Nimirowski, Henry Olejarz, Milton Moore, Thomas Preuss, William Colburn, Willard Still, and Jeffrey Clabette.

4. Respondent did not violate the Act as further alleged in the complaint.

5. Respondent's unlawful layoff of Clabette interfered with the representation election conducted on November 12, 1992.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

As I have found that Respondent unlawfully laid off Lalumiere, Lewczyk, Seidl, Pothier, Nimirowski, Olejarz, Moore, Preuss, Colburn, Still, and Clabette I shall recommend that Respondent be ordered to offer each of them immediate reinstatement to their former positions of employment or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and to remove from its files any reference to the layoffs. It is also recommended that Responded be ordered to make them whole for any loss they suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, J. T. Slocomb Co., South Glastonbury, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Laying off, terminating, or otherwise discriminating against its employees in order to thwart a union organizing drive among its employees.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Lalumiere, Lewczyk, Seidl, Pothier, Nimirowski, Olejarz, Moore, Preuss, Colburn, Still, and Clabette immediate reinstatement to their former positions of employment or, if those positions are no longer available, to substantially similar positions without prejudice to their seniority or other rights and privileges, and make them whole for the loss they

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

suffered as a result of the discrimination in the manner set forth above in the remedy section of this decision.

(b) Remove from its files any reference to the layoffs of these employees and notify them in writing that this has been done and that evidence of this unlawful activity will not be used as a basis of future actions against them.

(c) Preserve and, on request, make available to the Board or its agents for examination or copying all records and documents necessary to analyze and determine the amount of backpay owed to these employees.

(d) Post at its facility in South Glastonbury, Connecticut, and at its other facilities still in operation, copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and shall be maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order, what steps Respondent has taken to comply.

IT IS FURTHER ORDERED that the consolidated complaint herein be dismissed insofar as it alleges violations of the Act not specifically found herein.

IT IS FURTHER ORDERED that the election conducted on November 12, 1992, in Case 34–RC–1117 be set aside, and a new election be held at such time as the Regional Director decides that the circumstances permit the free choice of a bargaining representative.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''